IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Bail Appl..No. 4425 of 2007()

CRIME NO.528 OF 2007 REGISTERED BY THE KALADY POLICE STATION

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: PETITIONERS/ ACCUSED

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1. M.P.GOPALAKRISHNAN,S/O.PARAMESWARAN NAIR
   MURIYAMBILLY VEEDU,MALAYATTOOR VILLAGE,
   MALAYATTOOR KARA.

2. MANOJ, M.R., S/O. RAMU,
   MAILATHUMKUDY VEEDU,MALAYATTOOR VILLAGE,
   MALAYATTOOR KARA.

3. SHIJU K.T., KOTTAIKKAL VEEDU,
   KANJOOR KARA, VADAKKUMBHAGAM VILLAGE.

BY ADV. SRI.K.ANAND

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA REP.BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,
   KALADY POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4425 of 2007

Dated this the 24th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners (accused 1 to 3) face allegations in a crime registered, inter alia, under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. All other offences are admittedly bailable. The crux of the allegations is that the accused persons (Accused Nos.2 and 3) along with some others were members of an unlawful assembly which in prosecution of their common object intentionally insulted the defacto complainant, a person belonging to the Scheduled Caste in a public transport vehicle. In public view the defacto complainant was allegedly insulted by the accused. Admittedly, the 1st accused was not present at the scene. The learned counsel for the petitioners submits that the allegations are being raised vexatiously as a counter blast because of the pendency of some other proceedings. Anticipatory bail may, in these circumstances, be granted to the petitioners, it is contended.

2. The learned Public Prosecutor opposes the application with the help of Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The said provision clearly proscribes entertainment of an application for anticipatory bail when the offence alleged includes the one punishable under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

3. The learned counsel for the petitioners, in these circumstances, submits that, at any rate, in so far as the 1st accused is concerned, on the allegations raised, the charge under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act cannot lie at all. He was not present at that time when the alleged insult was traded by the defacto complainant. I find merit in that submission by the learned counsel for the petitioners.

4. In so far as the other accused are concerned also, I am satisfied that they can appear before the learned Magistrate and seek regular bail. It has been repeated several times by this Court that the mere fact that the offence under Section 3 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is triable by the Special/Sessions Court is no reason for the Magistrate to abdicate his jurisdiction under Section 437 Cr.P.C. The decisions in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250)] make the position crystal clear.

5. In the result, this application for anticipatory bail is allowed in part. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m on 31.07.07. The learned Magistrate shall consider their applications for bail on merits, in accordance with law and expeditiously - on the date of surrender itself;

iii) While considering the bail application of the 1st accused, the learned Magistrate shall reckon that no allegation under Section 3 (1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act has been raised against him and accordingly consider his application for bail on merits.

(R.BASANT, JUDGE)

rtr/-